



26 DEC 2007

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In re Application of:  
Kock  
Application No.: 09/402,726  
Pct Appln. No.: PCT/DE98/00912  
Int. Filing Date: 27 March 1998  
Priority Date: 10 April 1997  
Attorney Docket No.: KOCK PCT  
For: Sound Pickup Device, Specially  
For A Voice Station

DECISION

This case is before the Office of PCT Legal Administration for treatment of issues arising under 35 U.S.C. 371.

### **BACKGROUND**

This international application was filed on 27 March 1998, claimed a priority date of 10 April 1997, and designated the United States. The International Bureau transmitted a copy of the published international application to the USPTO on 15 October 1998, and a Demand was filed prior to the elapse of 19 months from the priority date. The 30 month period for payment of the basic national fee in the U.S. ended as of midnight on 10 October 1999. Applicant paid the basic national fee on 08 October 1999.

### **DISCUSSION**

Review of the electronic application file reveals that the submission of 08 October 1999 included a transmittal letter under 35 U.S.C. 371, and that the accompanying declaration document was directed to international application PCT/DE98/00912.

The USPTO has adopted a bright-line test for determining whether application papers will be processed under 35 U.S.C. 371 or alternatively under 35 U.S.C. 111(a). Under this standard, any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.

To clearly indicate an international application is being filed under 35 U.S.C. 371 the applicant should use the "Transmittal Letter for United States Designated Office" (Form PTO-1390) as the transmittal letter.

Alternatively, one of the following indications may be used:

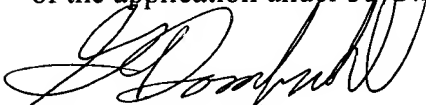
1) the applicant shall clearly state in the transmittal or cover letter that he or she is filing under 35 U.S.C. 371 or entering the national stage under PCT; or

2) the applicant clearly identifies in the oath or declaration the specification to which it is directed by referring to a particular international application by PCT Serial Number and International Filing Date and that he or she is executing the declaration as, and seeking a U.S. Patent as, the inventor of the invention described in the identified international application.

As noted above, the correspondence filed on 08 October 1999 was accompanied by a Form PTO-1390 (35 U.S.C. 371 Transmittal Letter), and the executed Declaration was directed to international application PCT/DE98/00912. No contrary instructions appear to have been present in the application file on 08 October 1998. Therefore, it would have been appropriate to treat the instant application under 35 U.S.C. 371.

### **DECISION**

This international application is being forwarded to the Office of Patent Application Processing for processing under 35 U.S.C. 371, including the correction of the electronic records of the USPTO to show this application as the U.S. national stage of PCT/DE98/00912. The date of the application under 35 U.S.C. 371(c)(1), (2) and (4) is **08 October 1999.**



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